

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

MEMORANDUM AND ORDER

This civil action is before the Court pursuant to 28 U.S.C. § 636(b), the Rules of this Court, and by the Order [Doc. 216] of the Honorable Thomas W. Phillips, United States District Judge, for disposition of the defendant's Motion to Exclude the Testimony of Rebecca Klemm or, in the Alternative, Grant it Other Available Relief. [Doc. 213] On May 5, 2008, the parties appeared before the Court for a hearing on the instant motion. During that hearing, the Court directed the plaintiff to investigate matters related to the discovery at issue and to report back to the Court on or before May 9, 2008. [Doc. 233] On May 9, 2008, the plaintiff filed the requisite status report with the Court. [Doc. 232]

In his status report, the plaintiff states that the parties have reached an agreement as to the resolution of the defendant's pending motion to exclude the testimony of Dr. Klemm. The parties propose to resolve the instant motion in the following manner:

(1) The plaintiff agrees not to call Dr. Klemm as a witness in the trial of the plaintiff's individual case, but reserves the right to call Dr. Klemm as a witness in any further proceedings, including a potential trial of class wide claims, in the event that the plaintiff is successful in his appeal as to the denial of class certification or his appeal of the dismissal of plaintiff's disparate impact claims;

- (2) The plaintiff will store all responsive documents and a digital copy of hard drive(s) of any of Dr. Klemm's computers which might retain any emails for which a forensic search could be made if necessary in the future;
- (3) the defendant reserves the right to renew his objections to Dr. Klemm's testimony in the event that Dr. Klemm does testify as set forth in (1).

The Court finds the parties' agreement to be well-taken and further finds that the exclusion of Dr. Klemm's testimony, as set forth above, is an appropriate resolution of the pending motion, with one addition:

- (4) In the event that plaintiff intends to call Dr. Klemm to testify in related litigation, the Court **ORDERS** that the plaintiff must notify the defendant at least 120 days in advance of such trial, so that the defendant will have sufficient time to prepare for and/or to renew its objections to Dr. Klemm's testimony. In the event that the timing of a ruling on the plaintiff's appeal renders it impossible to provide 120 days notice, the plaintiff shall provide defendant notice of a decision to present Dr. Klemm's testimony as far in advance of trial as possible.

Accordingly, the defendant's motion [Doc. 213] is **GRANTED** as set forth in (1) through (4) above. Additionally, the status conference previously scheduled for May 22, 2008, is hereby **CANCELLED**.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge